

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 ADVOCATES FOR RESPONSIBLE
4 DEVELOPMENT and JOHN E. DIEHL,

5 Petitioners,

6
7 v.

8 MASON COUNTY,

9
10 Respondent,

Case No. 06-2-0005

**COMPLIANCE ORDER
STORMWATER AND SEWERS**

11
12 **I. SYNOPSIS**

13 This case originated with a Petition for Review filed by Advocates for Responsible
14 Development and John Diehl in February 2006 that challenged Mason County's update of
15 its comprehensive plan and development regulations. The August 6, 2006 Final Decision
16 and Order (FDO) found various aspects of the County's plans for providing stormwater
17 facilities in the Belfair and Allyn Urban Growth Areas(UGAs) and for extending sewer
18 facilities in the Belfair UGA noncompliant. The FDO also found the County's development
19 regulations allowed for urban development before the availability of urban services.
20 Subsequently the Board bifurcated the stormwater and sewer issues because Mason
21 County needed more time to do its stormwater planning.
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24 In November 2007, the Board found that the County's sewer planning remained
25 noncompliant because the County showed neither that it had secured all the funding for the
26 six-year sewer plan nor how sewers would be provided throughout the Belfair UGA. That
27 order also found that the County's development regulations allowing urban density
28 development on community septic systems, which are not an urban service, and its binding
29 site plan regulations allowing for urban development before the availability of urban services
30 to be noncompliant and invalid.
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1 In January 2008, the Board found that although the County had adopted very good
2 stormwater plans for the Belfair and Allyn UGAs, it had not instituted development
3 regulations to implement those plans or that would ensure urban services with urban
4 development levels. The Board also found that the adoption of a stormwater utility was
5 necessary for financing the plan.
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7 These issues were heard together and this decision addresses both the stormwater and
8 sewer issues. The Board finds that the County has adopted low impact development
9 standards and the Washington State Department of Ecology's 2005 Stormwater Manual
10 called for by the stormwater plans. Petitioners claim that despite the adoption of a
11 stormwater utility, the lack of a rate structure made the six-year and 20-year financing for
12 the stormwater capital facilities noncompliant. The Board finds that stormwater rates are not
13 presently needed. Even so, the County has not identified all the specific sources of funding
14 to finance its six-year stormwater capital facilities plan so this plan does not comply with
15 RCW 36.70A.070 (3)(d). As for Petitioners' allegation that the lack of a rate structure makes
16 the 20-year stormwater capital facilities plan noncompliant, we find that issue is not before
17 the Board for compliance.
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20 The County has eliminated the allowance of community septic systems in the UGA, and
21 does not allow new on-site septic systems except in the Newkirk Road-Long-term UGA
22 Connection Area. However, development is only allowed at a density of one dwelling unit
23 per five acres, and only if the proposed development shows the location of future sewer
24 lines and provides that current development is arranged so as not to preclude future urban
25 densities. The Board finds that these regulations do not allow urban levels of development
26 before urban services are available and ensure that future urban densities will not be
27 precluded. These regulations overcome Petitioners' objection that this area is not
28 appropriate for a UGA.
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1 However, the County allows for commercial and industrial development on holding tanks,
2 which is not an urban service, in the Allyn and Belfair UGAs. Thus, the County still allows
3 some urban development without urban services. The Board finds that this regulation is
4 noncompliant and invalid.

5
6 Mason County has now secured the needed grant and loan funding for financing its six-year
7 capital facilities plan. Additionally, the County has adopted a financing plan that shows how
8 it intends to finance sewer capital facilities throughout the Belfair UGA. Petitioners object to
9 the Old Belfair Connection as being infeasible because of expensive contributions for
10 financing a Limited Improvement District. Here, the Board finds that a policy that commits
11 the County to assessing the consistency of its land use, capital facilities element and
12 financing plan combined with regulations that do not allow urban development before urban
13 services are available, make it possible for the County to attempt to finance this connection.
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15
16 Despite several findings of noncompliance, the Board is impressed by the giant steps
17 Mason County has taken in planning for capital facilities in the Belfair and Allyn UGAs.
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19 **II. PROCEDURAL HISTORY**

20 See Appendix A.
21

22 **III. PRELIMINARY MATTERS**

23 **Mason County's Motion to Strike Petitioners' Exhibit A**

24 **Positions of the Parties**

25
26 Mason County moved to strike Petitioners' Exhibit A, Preliminary Plat for the Riverhill
27 Subdivision – Division 1, attached to Petitioners' Objections to a Finding of Compliance Re:
28 Belfair Sewer System and Related Development Regulations. The County stated that this
29 subdivision was vested before the County's development regulations were declared invalid
30 and is not relevant to the compliance proceedings.
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1 Petitioners admitted that this exhibit was not presented to the County during the public
2 process to adopt the regulations and plan for which the County is seeking compliance.
3 Petitioners said that this exhibit was relevant to the proceedings because it showed
4 inappropriate development was occurring in the Belfair UGA.
5

6 **Board Discussion**

7 WAC 242-02-540 states,
8

9 Generally, a board will review only the record developed by the city, county, or
10 state in taking the action that is the subject of review by the board. A party by
11 motion may request that a board allow such additional evidence as would be
12 necessary or of substantial assistance to the board in reaching its decision, and
13 shall state its reasons. A board may order, at any time, that new or
supplemental evidence be provided.

14 Exhibit A was not presented to the County. This development was vested prior to the
15 Board's finding of invalidity in regards to the County's Belfair UGA development regulations.
16

17 **Conclusion:** Because this Exhibit was not presented to the County and the subdivision
18 was vested prior to a finding of invalidity, the Board finds that Petitioners' Exhibit A will not
19 be of substantial assistance to the Board. The County's motion to strike Exhibit A is
20 GRANTED.
21

22 **IV. BURDEN OF PROOF**

23 For purposes of board review of the comprehensive plans and development regulations
24 adopted by local government, the GMA establishes three major precepts: a presumption of
25 validity; a "clearly erroneous" standard of review; and a requirement of deference to the
26 decisions of local government.
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28 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
29 amendments to them are presumed valid upon adoption:
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1 Except as provided in subsection (5) of this section, comprehensive plans and
2 development regulations, and amendments thereto, adopted under this chapter are
3 presumed valid upon adoption.

4 This same presumption of validity applies when a local jurisdiction takes legislative action in
5 response to a noncompliance finding; that legislative action is presumed valid. The only
6 time that the burden of proof shifts to the County is when the County is subject to a
7 determination of invalidity.¹ The Board found Mason County's actions permitting
8 development within the Belfair UGA on community septic tanks (MCC 17.03.030 (B)(b))
9 and its binding site plan provisions allowing for urban densities without the availability of
10 urban services (MCC 17.03. 031) invalid. Therefore, the County has the burden to
11 demonstrate that the actions it has taken in response to this part of the November 14, 2007
12 Compliance Order on Plan and Development Regulations –Sewer in the Belfair UGA, will no
13 longer substantially interfere with the fulfillment of the goals of the GMA.²
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16 Additionally, on legislative actions taken by a local jurisdiction in response to a finding of
17 noncompliance, the statute further provides that the standard of review shall be whether the
18 challenged enactments are clearly erroneous:
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20 The board shall find compliance unless it determines that the action by the state
21 agency, county, or city is clearly erroneous in view of the entire record before the
22 board and in light of the goals and requirements of this chapter.

23 RCW 36.70A.320(3)

24 In order to find the County's action clearly erroneous, the Board must be "left with the firm
25 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
26 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
27

28 Within the framework of state goals and requirements, the boards must grant deference to
29 local governments in how they plan for growth:
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31 _____
32 ¹ RCW 36.70A.320(2) and (4).

² RCW 36.70A.320(4)

1 In recognition of the broad range of discretion that may be exercised by counties and
2 cities in how they plan for growth, consistent with the requirements and goals of this
3 chapter, the legislature intends for the boards to grant deference to the counties and
4 cities in how they plan for growth, consistent with the requirements and goals of this
5 chapter. Local comprehensive plans and development regulations require counties and
6 cities to balance priorities and options for action in full consideration of local
7 circumstances. The legislature finds that while this chapter requires local planning to
8 take place within a framework of state goals and requirements, the ultimate burden and
9 responsibility for planning, harmonizing the planning goals of this chapter, and
10 implementing a county's or city's future rests with that community.
11 RCW 36.70A.3201 (in part).

12 **V. ISSUES PRESENTED**

13 In its January 25, 2008 Compliance Order, the Board found several issues related to the
14 Allyn and Belfair Stormwater Plans noncompliant. The Board will discuss whether the
15 County has adopted development regulations to implement these stormwater plans,
16 whether development regulations ensure that urban levels of stormwater management will
17 be available when urban densities are allowed, and whether the County's six-year financing
18 plan complies with RCW 36.70A.070(3)(d).³

19 The Board's November 14, 2008 Compliance Order on Plan and Development Regulations
20 – Sewer in the Belfair UGA found several issues noncompliant and imposed invalidity on
21 certain development regulations. The Board will discuss whether the County has carried its
22 burden of proof that its development regulations no longer interfere with Goals 2 and 12, the
23 GMA's sprawl reduction and concurrency goals, and has achieved compliance by
24 precluding urban levels of development before urban services are available, while ensuring
25 urban levels of development can ultimately be achieved. Additionally, this order will discuss
26 whether the County's six-year sewer plan for the Belfair UGA meets the requirements of
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³ See Compliance Order (January 25, 2008) Conclusions of Law C, D, and E at 17.
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1 RCW 36.70A.070(3)(d) and whether the County has shown how it intends to finance its
2 capital facilities throughout the Belfair UGA. ⁴

3 4 VI. DISCUSSION

5 A. Stormwater

6 7 1. Adoption of Development Regulations Needed to Implement Stormwater 8 Plans

9 *Issue One:* Has the County adopted development regulations to implement the storm water
10 management plan adopted in Ordinance 108-07 to comply with RCW 36.70A.040(3)(d)?
11 (Conclusion of Law D)

12 *Issue Two:* Do County's development regulations assure that urban levels of storm water
13 management services are available when urban densities are allowed as required by RCW
14 36.70A.110(3), and Goals 2 and 12 of the GMA (RCW 36.70A.020(2) and (12))?
15 (Conclusion of Law E)

16 The Board's January 25, 2008 Compliance Order that addressed Mason's County's Allyn
17 and Belfair Stormwater plans found that the County had yet to adopt development
18 regulations to implement its stormwater plan, particularly the Washington State Department
19 of Ecology's (Ecology's) storm water manual and low impact development (LID)
20 regulations. Therefore, the County did not comply with RCW 36.70A.040 (3).⁵ This
21 Compliance Order also found that the failure to adopt these development regulations meant
22 that the County could not provide urban level stormwater services concurrent with urban
23 levels of development in the Allyn and Belfair UGAs. For this reason, the designation of the
24 Belfair UGA did not comply with RCW 36.70A.020(2), the GMA's sprawl reduction goal,
25 RCW 36.70A.020(12), the GMA's concurrency goal, and RCW 36.70A.110(3), the
26 requirements for designating UGAs based on the capability of providing urban services.
27
28 The January 25, 2008 Compliance Order stated:
29
30 _____

31 ⁴ See Compliance Order on Plan and Development Regulations-Sewer in the Belfair UGA, Conclusions of Law
32 C, D, E, F, and Conclusion, p.20.

⁵ Compliance Order at 12.

1 The County agrees that it has not yet adopted its development regulations
2 implementing the new storm water management plans... This means that the
3 County has not yet achieved compliance with Conclusion of Law J, ensuring
4 that storm water management services will be available when urban levels of
5 development are allowed in the Belfair UGA. As the Board found in the Final
6 Decision and Order, the failure to meet this requirement violates RCW
7 36.70A.110(3) and Goals 2 and 12 of the GMA. (RCW 36.70A.020(2) and
8 (12)).⁶

8 The County provided the Board with Ordinance 76-08 that adopted low impact development
9 standards and Ordinance 81-08 that adopted Ecology's 2005 Stormwater Manual, initially
10 for the Allyn and Belfair UGAs.⁷

11
12 Petitioners recognize the adoption of these regulations and the Stormwater Plan and no
13 longer argue that Mason County fails to comply with RCW 36.70A.040(3) in that regard.
14 Furthermore, Petitioners do not argue that Mason County lacks development regulations to
15 comply with RCW 36.70A.110(3) and RCW 36.70A.020(2) and (12). However, they do
16 argue that the failure to provide credible six –year and twenty-year financing plans still
17 causes the plan to fail to comply with RCW 36.70A.020(12) and RCW 36.70A.110(2) and
18 (3).⁸ The Board will discuss the challenges to the lack of credible financing plans below.

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21 **Conclusion:** With the adoption of Ordinance 76-08 instituting LID standards and
22 Ordinance 81-08 adopting Ecology's 2005 Stormwater Manual, the Stormwater Plans for the
23 Belfair and Allyn UGAs now comply with RCW 36.70A.040(3). In regard to having
24 development regulations in place that provide for urban levels of stormwater management
25 at the time of development, the adoption of Ordinances 76-08 and 81-08 cause the Belfair
26 and Allyn stormwater plans to comply with RCW 36.70A.020(2) and (12) and RCW
27 36.70A.110(3).
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31 ⁶ Id. at 12.

32 ⁷ County Exhibits 1 and 2.

⁸ Objections to Finding Compliance Re: Stormwater Management at 2 and 3.

1 **2. Six Year Capital Facilities Plan**

2 *Issue Three:* Does the County's six-year financing plan comply with RCW 36.70A.070(3)(d)
3 with respect to financing?

4
5 The Board's January 25, 2008 Compliance Order found that the County's six-year financing
6 plan was not compliant because while the plan laid out possible sources of money, it had
7 not established a stormwater utility which was anticipated to cover about one fourth of the
8 costs of stormwater facilities. For that reason, the Board found that the County's capital
9 facilities plan for providing stormwater facilities did not comply with RCW 36.70A.070 (3)(d).⁹
10

11 Mason County has adopted a stormwater utility that the Board determined in its January 25,
12 2008 Compliance Order was lacking as a needed component of its six-year capital facilities
13 plan.¹⁰ Petitioners now allege that although the County now has a stormwater utility in
14 place, its vague program for establishing a rate structure still fails to provide a credible six-
15 year or twenty-year plan that "clearly identifies sources of public money for such purposes".
16 Petitioners say that this failure results in a lack of compliance with the requirements of RCW
17 36.70A.070(3)(b), (c) and (d), RCW 36.70A.110(2) and (3) and RCW 36.70A.020(12), the
18 GMA's concurrency goal.¹¹
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21 Petitioners further assert the County's director of utilities stated that stormwater
22 management would be supported for the first three years through grants, but made no
23 commitment when it might be necessary to establish rates for the stormwater utility.
24 Petitioners argue there is no evidence that grants will be forthcoming and, if they aren't, no
25 alternative plan for financing is included in the County's capital facilities element.
26 Petitioners also claim the County's vague program of possible utility rates does not satisfy
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31 ⁹ Compliance Order at 10 and 11.

32 ¹⁰ County's Exhibit 3, Ordinance 08-08.

¹¹ Objections to a Finding of Compliance Re: Stormwater Management at 2 and 3.

1 the statute's requirement for clear identification of funding sources and provides no
2 assurance that needed capital facilities will keep pace with growth allocated to UGAs.¹²

3
4 Petitioners also claim the failure to establish rates makes the stormwater capital facilities
5 plan speculative. At argument, Emmett Dobey, the County's Director of Public Utilities,
6 responded that engineering and design studies are underway for the completion of
7 stormwater facilities and until that is completed, setting a realistic stormwater rate that the
8 public will accept is not possible. However, he declared that these studies will take place in
9 the first three years of the plan. The 2008-2013 Capital Facilities Plan indicates that the
10 activities that need to be financed are preliminary engineering, site preparation and
11 permitting, and construction engineering.¹³ The Board agrees that if stormwater utility rates
12 are not needed to finance the plan until outer years of the six-year planning period then not
13 having a rate structure in place does not make the plan noncompliant with RCW 36.70A.070
14 (3)(d). RCW 36.70A.070(3)(d) requires a capital facilities plan for at least six years that will
15 finance such capital facilities within "projected" funding capacities. RCW 36.70A.070(3)(d)
16 must be read with RCW 36.70A.070(3)(e) that provides a needed safeguard. RCW
17 36.70A.070(3)(e) says a capital facilities element must include:
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20 ...a requirement to reassess the land use element if probable funding falls short of
21 meeting existing needs and to ensure that the land use element, capital facilities plan
22 element, and financing plan within the capital facilities plan element are coordinated
23 and consistent...

24 Mason County has adopted such a policy. Policy CF-108 states,

25 As the capital facilities plan is amended to reflect a changing financial situation or
26 changing priorities, the land use chapter shall be reassessed on at least a biennial
27 basis to assure internal consistency of the land use chapter with capital facilities
28 chapter and its six-year financing plan.¹⁴

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31 ¹² Id.

32 ¹³ Attachment E to Mason County's Compliance Report and Index to the Record re: Belfair Sewer
Improvement System and Related Development Regulations, Capital Facilities Plan at VI- 66.

¹⁴ Id. at VI.5.

1 Also, the GMA provides additional means of keeping a capital facilities plan current. RCW
2 36.70A.130(2)(a) (iii) allows the County to amend its capital facilities plan concurrently with
3 the adoption of or amendment to the County's budget. Therefore, Policy CF-108 requires
4 Mason County to adopt a rate structure when it is needed and RCW 36.70A.130(2)(a)(iii)
5 provides the method to accomplish it. RCW 36.70A.070(3)(d) does not require the County
6 to adopt an alternative method of funding its six-year capital facilities plan, but Policy CF-
7 108 obligates the County to adopt an alternative if it is needed, and commits the County to
8 assess the consistency of its land use element, capital facilities element, and its six-year
9 capital facilities plan on a biennial basis. Therefore, it is not necessarily a violation of RCW
10 36.70A.070(3)(d) for the County not to have adopted utility rates if the rates are not needed
11 to finance capital facilities now. According to Policy CF-108, the County is obligated to
12 adopt them when they are needed or adjust its land use element. Failure to do this would
13 violate the GMA.
14

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16 However, Petitioners contend that neither the six-year capital facilities plan nor the twenty-
17 year capital facilities plan incorporated into the County's capital facility plan¹⁵ clearly identify
18 which sources of public money the County will use to finance the stormwater plans. The
19 County's six-year stormwater plan provides only a very general description of the sources of
20 public money. The Allyn and Belfair Stormwater Plans and Addendums included short-term
21 and long-term strategies for financing the stormwater plan's capital facilities as well as
22 programmatic costs. These plans included estimates of what different funding sources
23 would generate on an annual basis including SEPA Mitigation fees, system development
24 charges, sales tax revenues, REET (Real Estate Excise Tax) Funding, and Project Specific
25 Funding. The analysis for both plans concluded that these funds would generate sufficient
26 funds to finance the plans' annual costs¹⁶. From these analyses, the Board concluded that
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31 ¹⁵ The 20-year capital facilities plan is contained in *Allyn and Belfair Stormwater Management Plans and*
32 *Attached Addendums* and is incorporated into its capital facilities plan. Chapter VI, Capital Facilities at VI-3.

¹⁶ *Allyn and Belfair Stormwater Management Plans and Attached Addendums* at Belfair UGA Stormwater
Management Plan at 79 and 80; Allyn Stormwater Management Plan at 86 and 87.

1 since a stormwater utility constituted approximately one fourth of the plans' revenue on an
2 annual basis that it was necessary for the County to adopt a stormwater utility.¹⁷

3
4 This does not now appear to be the case based on Mr. Dobey's statements to the Planning
5 Commission¹⁸ and at the Hearing on the Merits. To determine what funds were actually
6 being used to finance stormwater capital facilities, the Board examined the 2008-2013
7 capital facilities plan that was submitted as an attachment to the County's Compliance
8 Report regarding the Belfair Sewer System. The categories for funding sources in the 2008
9 -2013 six-year capital facilities plan are described as In-House REET, Other Sources, and
10 Grants.¹⁹

11
12 RCW 36.70A.070 (3)(d) says:

13
14 (3) A capital facilities plan element consisting of: ... d) at least a six-year plan that will
15 finance such capital facilities within projected funding capacities and clearly identifies
16 sources of public money for such purposes.

17 The only clearly identified source of funding in the 2008-2013 Capital Facilities Plan is the
18 REET. The Capital Facilities Plan, including the referenced Belfair and Allyn Stormwater
19 Plans, provides no narrative that shows the sources for funds in the grant category of the
20 six-year plans. While the March 24, 2008 Planning Advisory Commission and the June 17,
21 2008 Staff Report on adopting a stormwater utility indicate that grants have been secured to
22 support the six-year stormwater capital facilities plan, the six-year capital facilities plan does
23 not indicate the sources of the grant funding, whether they have been secured, or evaluate
24 the likelihood of obtaining these grant resources. Also, "Other Sources" are not identified so
25
26

27 ¹⁷ Id.

28 ¹⁸ Exhibit 5 attached to Mason County's Compliance Report and Index to the Record re: Stormwater
29 Management at 4 and 5.

30 ¹⁹ Attachment E to County's Compliance Report and Index to the Record re; Belfair Sewer Improvement
31 System and Related Development Regulations at Ordinance 97-08 at VI-66. For the Stormwater portion of
32 this case, the Board takes official notice of County's Comprehensive Plan Chapter VI, Capital Facilities
pursuant to WAC 242-02-660(4). Comparing the Stormwater Drainage Fund in Chapter VI adopted by
Ordinance 97-08 in July 2008 with the Storm Drainage Fund submitted to the Board in October 2007 shows
amendments to the Fund.

1 it is impossible to determine if stormwater utility rates will be needed to finance stormwater
2 capital facilities, or what these other sources might be.

3
4 **Conclusion:** Because the County's six-year capital facilities plan does not clearly identify
5 sources of public money needed to finance the stormwater plans , it does not comply with
6 RCW 36.70A.070(3)(d).

7
8 Petitioners also claim that failure to adopt stormwater utility rates calls into question whether
9 the twenty-year capital facilities plan is fully funded and complies with RCW 36.70A.070
10 (3)(b) and (c), RCW 36.70A.110(2), RCW 36.70A.110(3), and RCW 36.70A.020(12). This
11 is not an issue that is before the Board on compliance. When the Board found the County
12 out of compliance with RCW 36.70A.110(3) and RCW 36.70A.020(12), it was due to the
13 lack of development regulations to provide urban levels of service concurrent with
14 development. The January 25, 2008 Compliance Order stated:

15
16 The County agrees that it has not yet adopted its development regulations
17 implementing the new storm water management plans, but points out that it is making
18 significant progress... This means that the County has not yet achieved compliance
19 with Conclusion of Law J, ensuring that storm water management services will be
20 available when urban levels of development are allowed in the Belfair UGA. As the
21 Board found in the Final Decision and Order, the failure to meet this requirement
22 violates RCW 36.70A.110(3) and Goals 2 and 12 of the GMA. (RCW 36.70A.020(2)
and (12))

23 The issue of the compliance of both the plan and the development regulations as to
24 concurrency of storm water management services with urban levels of development
25 has not yet been fully addressed by the County. Since there is no question but that
26 the County has not yet adopted its development regulations on storm water
27 management (in particular the 2005 Ecology Manual and the new LID ordinance), the
28 Board cannot yet find compliance on this score. Therefore, the Board will find
29 continuing non-compliance as to concurrency and storm water management, with the
30 understanding that the County is moving expeditiously to adopt its applicable
development regulations and will bring them to the Board when they are ready.
(footnotes eliminated).²⁰

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32 ²⁰Compliance Order at 12 and 13.

1 In its January 25, 2008 Compliance Order, the Board addressed the need for development
2 regulations to fulfill the concurrency requirement, not whether the County's long-term
3 financing plan included specific funding choices. Therefore, any issue regarding the
4 County's twenty-year funding plan is not before us on compliance.
5

6 Further, the Board notes that it has already ruled upon Petitioners' contention that the
7 County's stormwater management plans for Belfair and Allyn did not comply with RCW
8 36.70A.070(3)(b) and (c). The January 25, 2008 Compliance Order found:
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10 The future facilities needed are forecasted for each UGA – Allyn and Belfair
11 – as part of the retrofit of existing facilities and facilities needed for future
12 development. Thus the new storm water management plan “contain[s] a
13 forecast of the future needs for stormwater management facilities; [and] the
14 proposed locations and capacities of expanded or new capital facilities” as
required by RCW 36.70A.070(3)(b) and (c). (footnotes eliminated).²¹

15 **Conclusion:** The issue of whether the County's twenty-year financing plan complies with
16 RCW 36.70A.070(3)(b) and (c), RCW 36.70A.110(2) and (3), and RCW 36.70.020(2) is not
17 an issue before the Board on compliance. Therefore, the Board cannot address it pursuant
18 to RCW 36.70A.290(2).
19

20 21 **B. Provision of Sewers in the Belfair UGA**

22 **1. Development Regulations**

23 *Issue One:* Does MCC 17.03.030(B)(b) (allowing new urban development on large on-site
24 septic systems) fail to comply with the requirements for urban levels of service to urban
25 levels of development and RCW 36.70A.110(3), 36.70A.020(2) and (12), 36.70A.030(19)
26 and (20) and for that reason continue to be invalid? (Conclusions of Law C and F).
27 *Issue Two:* Does MCC 17.03.031 (the binding site plan provisions) fail to comply with RCW
28 36.70A.110(3), 36.70A.020(2) and (12) 36.70A.030(19) and (20), and for that reason
continue to be invalid? (Conclusions of Law D and G)
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32 ²¹ Id. at 10.

1 The Board's November 14, 2007 Compliance Order found the provisions allowing the
2 development of new residential subdivisions at urban densities on community septic
3 systems (MCC 17.03.030(B)(b)) failed to comply with RCW 36.70A.110(3), 36.70A.020(2)
4 and (12), and 36.70A.030(19) and (20). The Board based its finding of noncompliance on
5 several factors. One was the Board's conclusion that community septic systems were not an
6 urban service. Another was the fact that although the County planned to use community
7 septic systems as an interim service until sewers were available within 500 feet of the
8 development, it had no plan to show how it would provide sewers throughout the UGA.²²
9 Additionally, the Board also found MCC 17.03.031, the provision allowing urban densities to
10 develop based on binding site plans before urban levels of service are available, also failed
11 to comply with RCW 36.70A.110(3), 36.70A.020(2) and (12), 36.70A.030(19) and (20).²³
12 The Board imposed invalidity on MCC17.02.030(B)(b) and MCC 17.02.031 because with
13 both these provisions substantial risk existed that significant development could occur
14 without urban services and these provisions substantially interfered with RCW
15 36.70A.020(12), the Growth Management Act's (GMA) concurrency goal.²⁴
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19 Mason County declares MCC 17.03.030 and 17.02.031 as amended by Ordinance 45-08
20 now precludes the use of new individual or community septic systems in areas zoned for
21 future urban densities and requires connection to the sewer system when it comes within
22 500 feet of a property. However, within those portions of the UGA identified as the Newkirk
23 Road Connection-Long Term UGA the County will approve on-site septic systems if certain
24 conditions are met, including a density of no greater than one unit per five acres.²⁵ The
25 County asserts that Ordinance 58-08 amended Ordinance 45-08 to require all subdivisions
26 within the Belfair and Allyn UGAs to have an urban density of at least four dwelling units per
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30 ²² Compliance Order (November 14, 2007) at 14.

31 ²³ Id. at 16 and 17.

32 ²⁴ Id. at 21-23, 2.

²⁵ Mason County's Compliance Report at 3.

1 acre.²⁶ Mason County maintains that these provisions bring the County into compliance with the GMA.

3
4 Petitioners allege the problem with the County's plan for providing sewers for planned
5 development in the Belfair UGA is the allowance of continued development on septic
6 systems in part of the UGA. Petitioners specifically point to the Newkirk Road Connection-
7 Long-term UGA Zone where development is allowed to continue to develop without sewer
8 facilities at one dwelling unit per five acres and where sewer service construction is not
9 planned until 2018-19 and service is not slated to begin until 2020.²⁷

11 Petitioners claim while the restriction of one unit per five acres in this area is an appropriate
12 rural density, the use of this density calls into question whether an area at this density
13 belongs in the UGA since by definition a UGA is an area characterized by urban growth
14 where urban services can be provided concurrent with development. According to
15 Petitioners, the County has not shown how the area will be able to accommodate the
16 projected population growth assigned to it when this part of the UGA is developed at rural
17 densities.²⁸

19
20 RCW 36.70A.110(3) states (in pertinent part),

21 Urban growth should be located first in areas already characterized by urban growth
22 that have adequate existing public facility and service capacities to serve such
23 development, second in areas already characterized by urban growth that will be
24 served adequately by a combination of both existing public facilities and services and
25 any additional needed public facilities and services that are provided by either public
26 or private sources, and third in the remaining portions of the urban growth areas...

27 RCW 36.70A.110(3) does not anticipate that all parts of the UGA must be served with urban
28 services immediately, but requires counties to have a plan that shows the location and
29

30
31 ²⁶ Id. at 3 and 4.

32 ²⁷ Objections to a Finding of Compliance Re: Belfair Sewer Improvement system and Related Development
Regulations at 2 and 3.

²⁸ Id. at 2.

1 capacities of public facilities and services and how they will be funded. When read together
2 with RCW 36.70A.110 (2) and (3) and RCW 36.70A.020(2) and (12), these provisions mean
3 that urban development in UGAs cannot take place until urban services can be provided.

4 As the Board stated in our November 14, 2007 Compliance Order:

5 ...allowing new development to occur in a UGA prior to the availability of urban
6 services requires a delicate balancing of two principles. On one side of the
7 equation, the new development cannot be at urban densities because urban
8 services are not yet available. On the other side of the equation, new
9 development at non-urban densities must not preclude the eventual achievement
10 of urban densities when urban services become available.²⁹

11 The Board also said,

12 Binding site plans are a mechanism that allow some development to occur in the
13 UGA at rural densities and intensities so long as that development does not
14 preclude (and indeed plans for) urban densities and intensities *when urban levels
15 of service are available.*³⁰

16 Mason County has almost achieved this delicate balance. MCC 17.03.030 (A)(1) prohibits
17 the creation of new lots on on-site or community septic systems within the Belfair or Allyn
18 UGA with one exception, the Newkirk Road Connection – Long Term UGA. While MCC
19 17.03.031 allows development within that area using on-site septic systems at a density at
20 one dwelling unit per five acres, it does so with conditions that include: (1) a binding site
21 plan that provides for future sewer pipelines and other utilities in accordance with the Belfair
22 UGA Build-Out Sewer Connection Map (17.03.031 (A)(2)), and (2) demonstration that
23 development at the minimum urban densities allowed in the zone could be achieved once
24 public sewer and/or water would be available to serve the project site (17.03.031(A)(3)).
25 Further, 17.03.030 (A)(2) requires all new subdivisions to achieve a residential density of at
26 least four dwelling units per acre. All of these provisions work together to prevent urban
27 growth before urban services are available, and provide mechanisms so that current
28 development will not preclude future urban development when urban services are available.
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30
31

32 ²⁹ Compliance Order (November 14, 2007) at 15 and 16.

³⁰ Id. at 14.

1 In the interim, the development will not threaten rural character if the County decides in
2 future updates to its capital facilities plan that providing sewers to this area is not feasible
3 and decides to remove this area from the UGA.
4

5 Even so, Mason County has adopted one regulation that continues to threaten this delicate
6 balance. The Board's November 2007 Compliance Order found that community septic
7 systems were not an urban service and allowing urban development on community septic
8 systems violated RCW 36.70A.110(3), 36.70A.020(2) and (12) 36.70A.030(19) and (20).
9 The County has now adopted a development regulation, MCC17.03.030 B (1), that allows
10 for commercial and industrial development on temporary holding tanks within the UGA.
11 These regulations conclude that temporary holding tanks are not considered an "on site
12 septic system". While temporary holding tanks are not an "on-site system" that does not
13 mean they are an urban service pursuant to RCW 36.70A.030(20).
14
15

16 In its August 6, 2007 Compliance Order in *Abenroth v. Skagit County*, WWGMHB 97-2-
17 0060c and its Final Decision and Order in *Skagit County Growthwatch v. Skagit County*,
18 Case No. 07-2-0002, the Board concluded that allowing development on temporary holding
19 tanks allowed urban development before urban services were available, and thus violated
20 RCW 36.70A.110(3) and RCW 36.70A.020(12).³¹ The Board has the same concerns about
21 temporary holding tanks that we had about community septic systems. MCC 17.030.030
22 B(1) continues to allow urban growth before urban services are available. Therefore, Mason
23 County has failed to carry its burden of proof that it no longer allows urban development
24 without the availability of urban services and that all of its development regulations no
25 longer interfere with RCW 36.70A.020(2) and (12). MCC.17.02 030 B.1 does not comply
26 with RCW 36.70A.110(3) and RCW 36.70A.020(2) and (12).
27
28
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31 ³¹ See *Abenroth v. Skagit County*, WWGMHB Case No. 97-2-0060c(Compliance Order, August 6, 2007) and
32 *Skagit County Growthwatch v. Skagit County*, WWGMHB Case No 07-2-0002 (Final Decision and Order,
August 6, 2007) at 64, 65, 72, and 75.

1 MCC 17.02.030 B(1) is also found to be invalid. Where a local jurisdiction is making efforts
2 to comply with Board decisions, the Western Board has looked to whether there is a
3 reasonable risk that the continued validity of comprehensive plan provisions and/or
4 development regulations that the Board has found noncompliant will make it difficult for the
5 county or city to engage in proper planning. See *Vinatieri v. Lewis County*, WWGMHB Case
6 No. 03-2-0020c and *Irondale Community Action Neighbors v. Jefferson County*, WWGMHB
7 Case No. 04-2-0011, as examples. Here, the risk of significant inconsistent development is
8 considerable. The provisions of MCC 17.03.030 B 1) allow new urban levels of
9 development on temporary holding tanks and provide a developer with an opportunity to
10 construct within the Belfair UGA without public sewer.
11

12
13 **Conclusion:** The County has carried its burden of proof that MCC 17.03.030 A no longer
14 interferes with RCW 36.70A.020(2) and (12) because it does not allow urban levels of
15 development before urban services are available. For that reason, MCC 17.03.030 A now
16 complies with RCW 36.70A.110(3) and RCW 36.70A.020(2) and (12). However, the
17 addition of MCC 17.03.030 B(1) allows for industrial and commercial development on
18 temporary holding tanks which is not an urban service. Thus MCC 17.03.030 B(1) is
19 noncompliant with RCW 36.70A.110(3) and RCW 36.70A.020(2) and (12) and substantially
20 interferes with RCW 36.70A.020(2) and (12), the GMA's sprawl reduction and concurrency
21 goals.
22

23
24 MCC 17.02.031 allows a density of one dwelling unit per five acres until urban services are
25 available and is coupled with the provision that development proposals must demonstrate
26 that urban densities of at least four dwelling units per acre can be achieved. MCC
27 17.02.031 requires site plans to provide for future sewers and other utilities and should
28 enable the UGA to accommodate the UGA's projected growth. Because of these provisions
29 the Board finds the County has carried its burden of proof that MCC17.03.031 has removed
30 substantial interference with GMA Goals 2 and 12. These provisions should allow the
31 County to accommodate its projected growth, overcome Petitioners' objections that the
32

1 Newkirk Road Connection – Long-term UGA should not be included in the UGA and cure
2 the County's noncompliance with RCW 36.70A.110(3), 36.70A.030(19) and (20).

3
4 **2. Compliance of the Six –Year Capital Facilities Plan with RCW 36.70A.070 (3)(d)**

5 *Issue Three:* Does the capital facilities element of the County's comprehensive plan, as
6 amended with the Sewer Plan, fail to meet the requirements for financing of RCW
7 36.70A.070(3)(d)? (Conclusion of Law E)

8 The Board's November 14, 2007 Order found:

9 The financing portion of the plan anticipates projects constructed from 2006-2009.
10 The 2006 basis for these costs is \$24,545,000 (escalated cost \$26,799,419). Of
11 that amount, \$18,429,106 has been secured through a combination of state
12 grants. The remainder, \$8.4 million, "remains to be financed." The Sewer Plan
13 analyzes three "scenarios" for funding the initial capital costs of the system but
14 does not adopt any one of them. Since it lacks at least a six-year plan for
15 financing the capital improvements needed to the sewer system for the Belfair
16 UGA, the Sewer Plan fails to comply with RCW 36.70A.070(3)(d).³² (footnotes
17 eliminated)

18 Later on its December 14, 2007 Order on Motion for Reconsideration, the Board modified its
19 Finding of Fact 34 in its November 14, 2007 order to read:

20 \$22, 033, 500 has been secured through a combination of state grants and loans.
21 The remainder \$2,511, 500 (\$4,655,919 if "escalated costs") remains to be
22 financed.³³

23 Appendix A of the County's Capital Facilities Plan indicates that the County had secured
24 \$16 million in grants and 2.4 million in state loans. Appendix A also indicates that the
25 County now has secured a total of \$24 million in state grants and has \$3 million in state
26 loans available to it.³⁴ Petitioner concedes that Phase I of the Belfair sewer system has
27 been financed.³⁵

28
29
30 ³² Compliance Order on Plan and Development Regulations – Sewer in the Belfair UGA at 19.

31 ³³ Order on Reconsideration (December 14, 2007) at 12.

32 ³⁴ Attachment E to County's August 14, 2008 Compliance Report at VI-75.

³⁵ Objections to a Finding of Compliance RE: Belfair Sewer Improvement System and Related Residential
Development Regulations at 1.

1 **Conclusion:** Based on the information contained in Appendix A and lack of Petitioners'
2 objection to the compliance of the County's six-year financing plan for the Belfair sewer
3 system, the Board finds that the County's six-year financing plan for sewer service in the
4 Belfair UGA now complies with RCW 36.70A.070(3)(d).
5

6 **3. Financing of Sewers Throughout the UGA**

7

8 *Issue Four.* Has the County shown how intends to finance the unfunded capital facilities
9 needed throughout the UGA, and therefore, does not comply with RCW 36.70A.110(3) and
10 RCW 36.70A.020(12)? (Conclusion: p.20)

11 The Board's November 14, 2007 Compliance Order found
12 ...the County has not shown how intends to finance the unfunded capital facilities
13 needed throughout the UGA, and therefore, does not comply with RCW
14 36.70A.110(3) and RCW 36.70A.020(12).³⁶

15 Mason County declares it has adopted and incorporated into its capital facilities plan
16 element the findings and recommendations of the Belfair Financial Plan and build-
17 out/phasing of the sewer projects. The County maintains the capital facilities plan now
18 shows that no portion of the UGA would fall beyond 500 feet from a sewer line and the
19 capital facilities plan now more accurately projects and allocates costs over the plan's
20 timeframe. The County says it has identified funding sources including additional grants,
21 developer contributions, rates/fees, and the Local Improvement Districts (LIDs). The County
22 states its capital facilities plan now identifies not only funding for the required six-years, but
23 for the UGA's entire build-out period.³⁷
24

25 Petitioners contend that there are two problems with the County's sewer plan that do not
26 guarantee that sewers will be provided throughout the UGA during the planning period.
27 The first problem is one that the Board discussed *supra* concerning the Newkirk Road –
28 Long-Term UGA where construction is planned for the end of the planning period, 2018-19,
29
30

31 ³⁶ Compliance Order on Plan and Development Regulations – Sewer in the Belfair UGA at 20.

32 ³⁷ Mason County's Compliance Report and Index to the Record re: Belfaire Sewer Improvement System and
Related Development Regulations at 4 and 5.

1 with service beginning in 2020. Petitioners say that revenue needed to finance this system,
2 Revenue Bonds and Capital Reserves is speculative.

3
4 Petitioners state the second problem with the County's sewer planning is the plan for
5 extending sewer to what is called the "Old Belfair Highway Connection". According to
6 Petitioners, the sewer capital facilities plan foresees this sector of the UGA being served by
7 a Utility Local Improvement District (ULID) which will supposedly collect \$16,000,000 from
8 assessments. Petitioners assert the capital costs per Equivalent Residential Unit (ERU) will
9 be \$43,000, and when combined with operating costs, it is not at all clear this proposed
10 financing is feasible. Petitioners contrast this with earlier forecasts of \$5,800 per ERU that
11 the Belfair/Lower Hood Canal Water Reclamation Facility Plan (Appendix A) estimated and
12 characterized as having a severe monthly impact per rate payer. Without actual formation
13 of a ULID and an adoption of an assessment, Petitioners say this part of the plan lacks
14 credibility.³⁸
15
16

17 However, the Capital Facilities Plan's Appendix A also describes this area as one of a
18 denser development pattern using on-site septic systems with high groundwater tables that
19 likely contribute nitrates and fecal contamination to Hood Canal. Appendix A recognizes
20 that state and federal assistance will be needed to make this connection a reality.³⁹
21

22 As the Board discussed *supra* RCW 36.70A.110(3) does not require that every funding
23 mechanism that the County intends to use to finance its capital facilities for the UGA must
24 be in place at the adoption of a UGA so long as the County has development regulations
25 that: (1) preclude urban development before these urban services are available, and (2)
26 ensure that development that does occur does not prevent the extension of urban services
27 or prevent urban development from occurring in the future. Mason County's development
28 regulations do this, except in one instance, in a very responsible manner. Therefore, the
29
30

31 ³⁸ Objections to a Finding of Compliance RE: Belfair Sewer Improvement System and Related Development
32 Regulations at 2 and 3.

³⁹ *Id.*

1 Board does not agree with Petitioners that the sewer capital facilities plan is noncompliant
2 with RCW 36.70A.110(3) or RCW 36.70A.020(2) or (12) because the County does not have
3 a ULID in place now. Further, while the Board recognizes that the pieces that the County
4 must put in place to realize this sewer connection are formidable, it is too early in the
5 planning process to discard them as unachievable. Even though this Board has held
6 almost since its inception that the GMA required counties to show how it planned to serve its
7 entire UGA and that these plans should not be speculative⁴⁰, the Board also recognized that
8 policies, regulations, and plans needed more flexibility in later years of the plan:
9

10 Compliance with Goal 12 requires local governments to adopt either policies or
11 regulations or a combination that provide reasonable assurances, but not
12 absolute guarantees that the locally defined (within the perimeters of the Act)
13 public facilities and services necessary for future growth are adequate within
14 previously established LOS levels to serve that new growth either at the time of
15 occupancy and use, or within an appropriately timed phasing of growth
16 connected to a clear and specific funding strategy. The growth phasing and
17 funding strategies will of necessity need to be more flexible for later years and
18 more definitive in the immediate future. Such policies or regulations or
19 combination must include a process that answers both the questions of what will
20 be done, and how the goal will be achieved.⁴¹

19 Completing the Old Belfair Sewer Connection gives the County the opportunity to correct
20 the possible environmental damage that this area is causing as well as providing for sprawl
21 reduction and economic development possibilities. The Board finds that the County's
22 capital facility plan for sewers straight-forwardly projects the capital facilities needs of this
23 area and lays out the assumptions of how it intends to finance them. While the mechanisms
24 are not in place now, the County's development regulations, except for MCC 17.02.030
25 B(1), prevent future environmentally damaging development and urban development
26 without urban services as well as ensuring development in the UGA now will not preclude
27 future urban development. As described *supra*, Policy CF-108 mandates that the County
28 examine its capital facilities and land use plans on a biennial basis. If the County cannot in
29
30

31
32 ⁴⁰ See *Cotton v. Jefferson County*, WWGMHB 98-2-0017 (Amended Final Decision and Order, April 5, 1999)

⁴¹ *TRG v. Oak Harbor*, WWGMHB Case No. 96-2-0002 (Final Decision and Order, July 17, 1996).

1 the future put the funding mechanisms together to construct either the Old Belfair Sewer
2 Connection or the Newkirk Road – Long-term UGA Connection, the land use plan can be
3 adjusted without violating GMA Goals 2 or 12.

4
5 Petitioners maintain Mason County's situation is similar to one in San Juan County where
6 this Board found San Juan County's capital facilities plan noncompliant because it failed to
7 show how the entire UGA could be served over the 20-year planning period.⁴² San Juan
8 County's situation is different, as San Juan County relies on sewer districts to provide sewer
9 facilities to two of its UGAs, and San Juan County had not incorporated the sewer districts'
10 plans into their comprehensive plans. Further, one of the sewer districts could not show
11 how it intended to serve part of a UGA.⁴³ In Mason County's situation, for the sewer
12 facilities for the Belfair UGA, the County currently owns the sewer system and has shown
13 how it intends to provide these facilities throughout the UGA over the twenty-year life of its
14 plan.
15

16
17 **Conclusion:** Based on the foregoing, the Board finds that the County's twenty-year sewer
18 plan for the Belfair UGA complies with RCW 36.70A.110(3) and RCW 36.70A.020(12).
19

20 VI. FINDINGS OF FACT

- 21
- 22 1. Mason County is a county located west of the crest of the Cascade Mountains and is
23 required to plan pursuant to RCW 36.70A.040.
 - 24 2. Petitioners Advocates for Responsible Development and John Diehl filed timely
25 objections to a finding of compliance.
 - 26 3. On June 10, 2008 Mason County adopted Ordinance 76-08 that instituted low impact
27 development standards.
28

29
30 ⁴² Objections to a Finding of Compliance RE: Belfair Sewer Improvement System and Related Development
31 Regulations at 3.

32 ⁴³ See *Stephen Ludwig v. San Juan County*, WWGMHB Case No. 05-2-0019c, *Fred Klein v. San Juan County*,
WWGMHB Case No.02-2-0008, and *John Campbell v. San Juan County*, WWGMHB Case No. 05-2-0022
(Final Decision and Order/Compliance Order-Eastsound UGA, June 20, 2006).

- 1 4. On June 17, 2008 Mason County adopted Ordinance 81-08 that implemented
2 Ecology's 2005 Stormwater Manual, initially for the Allyn and Belfair UGAs.
- 3 5. On June 17, 2008, Mason County adopted Ordinance 80-08 that established a Storm
4 and Surface Water Utility.
- 5 6. The January 25, 2008 Compliance Order found: The future facilities needed are
6 forecasted for each UGA – Allyn and Belfair – as part of the retrofit of existing
7 facilities and facilities needed for future development. Thus the new storm water
8 management plan “contain[s] a forecast of the future needs for stormwater
9 management facilities; [and] the proposed locations and capacities of expanded or
10 new capital facilities” as required by RCW 36.70A.070(3)(b) and (c).
- 11 7. Policy CF-108 states, “As the capital facilities plan is amended to reflect a changing
12 financial situation or changing priorities, the land use chapter shall be reassessed on
13 at least a biennial basis to assure internal consistency of the land use chapter with
14 capital facilities chapter and its six-year financing plan”.
- 15 8. The *Allyn and Belfair Stormwater Plans and Addendums* included short-term and
16 long-term strategies for financing the stormwater plans' capital facilities as well
17 programmatic costs. These plans included estimates of what different funding
18 sources would generate on an annual basis including SEPA Mitigation fees, system
19 development charges, sales tax revenues, REET (Real Estate Excise Tax) Funding,
20 and Project Specific Funding. The analysis for both plans concluded that these funds
21 would generate sufficient funds to finance the plans yearly costs. From these
22 analyses, the Board concluded that since a stormwater utility made up about one
23 fourth of the plans' revenue on an annual basis that it was necessary for the County
24 to adopt a stormwater utility.
- 25 9. At the County's Planning Advisory Commission the County's Director of Public
26 Utilities stated that the County's stormwater program would be supported by grants
27 and that utility rates were not necessary to support the program at this time.
28
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- 1 10. The categories for funding sources in the 2008 -2013 six-year capital facilities plan
2 are described as In-House REET (Real Estate Excise Tax), Other Sources, and
3 Grants.
- 4 11. The capital facilities plan, including the referenced Belfair and Allyn Stormwater
5 Plans, provide no narrative that shows the sources for funds in the grant category in
6 the six-year plan. The six-year capital facilities plan does not indicate the sources of
7 the grant funding, whether they have been secured, or evaluate the likelihood of
8 obtaining these grant resources.
- 9 12. The County adopted Ordinance 45-08 that amended sections 17.03 of its code
10 related to on-site sewage disposal in the Belfair and Allyn UGAs and its binding site
11 plan regulations on April 8, 2008.
- 12 13. The County adopted Ordinance 46-08 that amended Title 17, Chapters 17.20
13 through 17.35 of its code related to the Belfair UGA's zoning and development
14 regulations on April 8, 2008.
- 15 14. On July 29, 2008, Mason County adopted Ordinance 97-08 that amended Chapter VI
16 of its capital facilities plan to include wastewater and water reclamation management
17 plans for the Belfair UGA.
- 18 15. While MCC 17.03.031 allows development within the Newkirk Road Connection –
19 Long-Term UGA with on-site septic systems at a density of one dwelling unit per five
20 acre, it does so with conditions that include: (1) a binding site plan that provides for
21 future sewer pipelines and other utilities in accordance with the Belfair UGA Build-Out
22 Sewer Connection Map (17.03.031 (A)(2)), and (2) demonstration that development
23 at the minimum densities allowed in the zone could be achieved once public sewer
24 and/or water would be available to serve the project site (17.03.031 (A)(3)).
- 25 16. MCC 17.03.030 (A)(2) requires all new subdivisions to achieve a residential density
26 of at least four dwelling units per acre.
- 27 17. Appendix A of the County's Capital Facilities Plan indicates that the County had
28 secured \$16 million in grants and \$2.4 million in state loans. Appendix A also
29
30
31
32

1 indicates that the County now has secured a total of \$24 million in state grants and
2 has \$3 million in state loans available to it.

3 18. Petitioner concedes that Phase I of the Belfair sewer system has been financed.

4 19. The County's capital facility plan for sewers straight-forwardly projects the capital
5 facilities needs of the Belfair UGA and lays out the assumptions of how it intends to
6 finance them.
7

8 **Findings of Fact Related to Invalidity**

9 20. MCC17.03.030 B(1) allows for commercial and industrial development on temporary
10 holding tanks within the UGA.

11 21. Temporary holding tanks are not an urban service pursuant RCW 36.70A.030(20).

12 22. Any Finding of Fact later determined to be a Conclusion of Law is adopted as such.
13

14 **VII. CONCLUSIONS OF LAW**

15 A. The Board has jurisdiction over the parties and the issues in this case.

16 B. Petitioners have standing to raise objections to a finding of compliance.

17 C. With the adoption of Ordinance 76-08 instituting LID standards and Ordinance 81-08
18 adopting Ecology's 2005 Stormwater Manual, the Stormwater Plans for the Belfair
19 and Allyn UGAs now comply with RCW 36.70A.040(3).
20

21 D. In regard to having development regulations in place that provide for urban levels of
22 stormwater management at the time of development, the adoption of Ordinances 76-
23 08 and 81-08 cause the Belfair and Allyn stormwater plans to comply with RCW
24 36.70A.020(2) and (12) and RCW 36.70A.110(3).
25

26 E. The challenge that the County's stormwater plans do not comply with RCW
27 36.70A.070(3)(b) and (c) are untimely pursuant to RCW 36.70A.290(2).
28

29 F. Because the County's six-year capital facilities plan does not clearly identify sources
30 of public money needed to finance the stormwater plans, it does not comply with
31 RCW 36.70A.070(3)(d).
32

- 1 G. When the Board found the County out of compliance with RCW 36.70A.110(3) and
2 RCW 36.70A.020(12), it was due to the lack of development regulations to provide
3 urban levels of service concurrent with development.
- 4 H. The issue of the County's twenty-year financing plan is not an issue before the Board
5 on compliance. Therefore, the Board cannot address it pursuant to RCW
6 36.70A.290(2).
- 7 I. The County has carried its burden of proof pursuant to RCW 36.70A.320(4) that MCC
8 17.03.030 A. no longer interferes with RCW 36.70A.020 (2) and (12) because it does
9 not allow urban levels of development before urban services are available. For that
10 reason, MCC 17.03.030 A. now complies with RCW 36.70A.110(3) and RCW
11 36.70A.020(2) and (12).
- 12 J. Mason County has failed to carry its burden of proof pursuant to RCW 36.70A.320(4)
13 that it no longer allows urban development without the availability of urban services
14 and that all of its development regulations no longer interfere with RCW 36.70A.020
15 (2) and (12). MCC.17.02 030 B(1) does not comply with RCW 36.70A.110(3) and
16 RCW 36.70A.020(2) and (12).
- 17 K. MCC 17.02.030 B(1) substantially interferes with RCW 36.70A.020(2) and (12), the
18 GMA's sprawl reduction and concurrency goals and is declared invalid.
- 19 L. The County's six-year financing plan for sewage in the Belfair UGA now complies
20 with RCW 36.70A.070(3)(d).
- 21 M. The County's twenty-year sewer plan for the Belfair UGA complies with RCW
22 36.70A.110(3) and RCW 36.70A.020(12).
- 23 N. Any Conclusion of Law later determined to be a Finding of Fact is adopted as such.
- 24
25
26
27

28 **VIII. ORDER**

29 Mason County must bring its six-year financing plan for stormwater capital facilities plan with
30 RCW 36.70A.070(3)(d) and its development regulations that allow for industrial and
31 commercial development employing temporary sewage holding tanks into compliance with
32

1 RCW 36.70A.110(3) and RCW 36.70A.020(2) and (12) within 180 days according to the
2 following schedule:

3	Compliance Due	June 8, 2009
4	Compliance Report and Index to Compliance	June 22, 2009
5	Any Objections to a Finding of Compliance and	July 6, 2009
6	Record Additions/Supplements Due	July 20, 2009
7	County's Response Due	July 29, 2009
8	Compliance Hearing (location to be determined)	

9
10
11 Entered this 9th day of December 2008.

12
13
14 _____
15 Holly Gadbow, Board Member

16
17 _____
18 Will Roehl, Board Member

19
20 _____
21 James McNamara, Board Member

22
23 Pursuant to RCW 36.70A.300 this is a final order of the Board.

24
25 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the
26 mailing of this Order to file a petition for reconsideration. Petitions for
27 reconsideration shall follow the format set out in WAC 242-02-832. The original and
28 three copies of the petition for reconsideration, together with any argument in
29 support thereof, should be filed by mailing, faxing or delivering the document directly
30 to the Board, with a copy to all other parties of record and their representatives.
31 **Filing means actual receipt of the document at the Board office.** RCW 34.05.010(6),
32 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for
filing a petition for judicial review.

1 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
2 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
3 judicial review may be instituted by filing a petition in superior court according to the
4 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

5 **Enforcement.** The petition for judicial review of this Order shall be filed with the
6 appropriate court and served on the Board, the Office of the Attorney General, and all
7 parties within thirty days after service of the final order, as provided in RCW
8 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,
9 but service on the Board means actual receipt of the document at the Board office
10 within thirty days after service of the final order.

11 **Service.** This Order was served on you the day it was deposited in the United States
12 mail. RCW 34.05.010(19).

Appendix A

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17 The petition for review in this case was filed on February 13, 2006 by Advocates for
18 Responsible Development and John E. Diehl (collectively "ARD"). Petitioners challenged
19 Mason County's update of its comprehensive plan and development regulations.

20
21 On August 14, 2006, the Board issued its Final Decision and Order. In that order, the Board
22 found that Mason County failed to comply on the following issues: (1) its comprehensive
23 plan and development regulations failed to ensure that public services will be available
24 when urban levels of development are allowed in the Belfair UGA and did not comply with
25 RCW 36.70A.110(3) and RCW 36.70A.020(12); (2) the portion of the capital facilities
26 element that describes the Belfair Area Sewer Improvement Project does not yet show how
27 the County will finance public sewer capital facilities in the Belfair UGA within projected
28 funding capacities, nor does it clearly identify sources of public money and did not comply
29 with RCW 36.70A.070(3)(d); (3) the capital facilities element and funding plan for storm
30 water management in the Belfair and Allyn UGAs did not contain a forecast of the future
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1 needs for stormwater management facilities; and (4) the proposed locations and capacities
2 of expanded or new capital facilities and at least a six-year plan that will finance such capital
3 facilities within projected funding capacities and clearly identifies sources of public money
4 for such purposes and did not comply with RCW 36.70A.070(3) and RCW 36.70A.020(12).
5 The order established a compliance date of February 7, 2007.
6

7 The Board granted a compliance period extension until August 6, 2007.⁴⁴ On July 6, 2007,
8 the Board granted the County's request to bifurcate the sewer and stormwater compliance
9 issues to give the County more time for public participation in the adoption of the stormwater
10 plan.⁴⁵
11

12 On November 14, 2007, the Board issued an order on the sewer compliance issues.⁴⁶ This
13 order found that the sewer plan lacked a financing plan for the North and East Belfair Urban
14 Growth Area and that the County's development regulations still allowed for urban
15 development without adequate urban services. The Board found the sewer plan
16 noncompliant and the development regulations noncompliant and invalid.
17
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19 The Board issued its Order on the County's Motion for Reconsideration on December 12,
20 2007 and amended its order to show that some, but not all the funds for Phase 1 of the
21 County's sewer plan had been obtained.
22

23 On January 25, 2008, the Board issued an order on the stormwater compliance issues.⁴⁷
24 The Board found that although Mason County had developed very good stormwater
25 management plans for the Allyn and Belfair UGAs, it has still not achieved compliance
26 because it had adopted development regulations, particularly Ecology's 2005 Stormwater
27 Manual and Low Impact Development standards, and a stormwater utility that was expected
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30 ⁴⁴ Order Granting Extension of the Compliance Period, Denying Request for Invalidity, and Setting of
31 Compliance Schedules.

32 ⁴⁵ Order on County's Request to Bifurcate Issues and Continue Stormwater Compliance (July 7, 2007).

⁴⁶ Compliance Order on Plan and Development Regulations –Sewer in the Belfair UGA.

⁴⁷ Compliance Order (January 25, 2008).

1 to finance about a quarter of the stormwater utility costs. Therefore, the County's
2 stormwater management plans did not comply with RCW 36.70A.110(3), RCW 36.70A.020
3 (12), and RCW 36.70A.070(3)(d).
4

5 On June 10, 2008 the County adopted Ordinance 76-08 that instituted Low Impact
6 Development standards within the Allyn and Belfair UGAs. On June 17, 2008, the County
7 adopted Ordinance 81-08 that implemented the 2005 Stormwater Ecology Stormwater
8 Manual and Ordinance 80-08 that established a Stormwater Utility.
9

10 The County adopted Ordinance 45-08 that amended sections 17.03 of its code related to
11 on-site sewage disposal in the Belfair and Allyn UGAs and its binding site plan regulations
12 on April 8, 2008. Additionally on that day, Ordinance 46.08 that amended Title 17, Chapters
13 17.20 through 17.35 of its code related to the Belfair UGA's zoning and development
14 regulations was adopted. Later on May 20, 2008, the County adopted Ordinance 58-08
15 which amended Ordinance 46.08 by making further changes to the Belfair Urban Growth
16 Area Regulations and Zoning Map to make it consistent with MCC 17.03.030 provision
17 requiring at least four dwelling units per acre. On July 29, 2008, Mason County adopted
18 Ordinance 97-08 that amended Chapter VI of its capital facilities plan to include wastewater
19 and water reclamation management plans for the Belfair UGA.
20
21

22 On March 21, 2008 the County filed its compliance report regarding the Belfair Sewer
23 Improvement System and Related Development Regulations. Petitioners timely filed their
24 objections. Subsequently Petitioners filed a supplemental compliance report and then
25 asked for an extension of the compliance period. With no Petitioners' objection and after a
26 telephonic compliance hearing, the Board granted the compliance extension.
27

28 On July 18, 2008, the County filed its compliance report regarding stormwater regulations,
29 and on August 18, 2008, its compliance report regarding the Belfair Sewer System and
30 related development regulations. Petitioners filed timely objections to compliance on both
31 the sewer and stormwater related issues.
32

1 The Board held two telephonic compliance hearings on September 18, 2008, one for
2 stormwater and one for sewer-related issues. All three Board Members attended, Holly
3 Gadbow presided. Monty Cobb, Deputy County Prosecutor, represented the County and
4 John Diehl represented the Petitioners at both hearings. Emmett Dobey, Director of Public
5 Utilities, attended for the County at both hearings. Consultants Mike McCormick and
6 Michael Sharar attended for Mason County at the hearing on sewer-related issues.
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